

STATE OF MICHIGAN  
COURT OF APPEALS

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CURTIS GREEN,

Plaintiff-Appellant,

v

DAIMLERCHRYSLER MOTORS  
CORPORATION,

Defendant-Appellee.

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UNPUBLISHED

January 19, 2006

No. 263980

Macomb Circuit Court

LC No. 2004-002004-CD

Before: Cavanagh, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's opinion and order granting defendant's motion for summary disposition of plaintiff's claim under the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.* Plaintiff alleged that defendant discriminated against him because of a perceived (but not actual) disability, namely that he was a crazy or violent man, a perception that allegedly was based on untrue allegations by supervisors and coworkers. We affirm.

This Court reviews the trial court's grant or denial of summary disposition *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court stated that defendant's motion for summary disposition was granted under MCR 2.116(C)(8) and (10). A motion under MCR 2.116(C)(8) tests the "legal sufficiency of the complaint on the basis of the pleadings alone." *Mack v Detroit*, 467 Mich 186, 193; 649 NW2d 47 (2002). In deciding a motion under MCR 2.116(C)(10), the trial court considers any pleadings, affidavits, depositions, admissions or other documentary evidence in a light most favorable to the nonmoving party to determine whether a genuine issue of fact exists. MCR 2.116(G)(2); *Ritchie-Gamester v Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Allstate Ins Co v Dep't of Mgt & Budget*, 259 Mich App 705, 709-710; 675 NW2d 857 (2003).

To establish a *prima facie* case of either discrimination or a hostile work environment based on a disability, plaintiff first needed to establish that he was a member of a protected class. *Downey v Charlevoix Co Bd of Co Rd Comm'rs*, 227 Mich App 621, 629, 632; 576 NW2d 712 (1998). To establish a disability under MCL 37.1103(d), plaintiff was required to prove "(1) that [he] was regarded as having a determinable physical or mental characteristic, (2) that the

perceived characteristic was regarded as substantially limiting one or more of [his] major life activities, and (3) that the perceived characteristic was regarded as being unrelated either to [his] ability to perform the duties of [his] particular job or position or to [his] qualifications for employment or promotion.” *Michalski v Bar-Levay*, 463 Mich 723, 735; 625 NW2d 754 (2001).

A “disability” that poses a “direct threat to the health and safety of other individuals in the workplace,” and that cannot be eliminated by reasonable accommodation, is not protected. *Collins v Blue Cross Blue Shield of Michigan*, 228 Mich App 560, 571; 579 NW2d 435 (1998). An employer is not required to retain an employee it considers “a direct threat to workplace safety.” *Id.* Further, as previously indicated, for plaintiff’s “perceived disability” to be a disability under the PWDCRA, it must have been regarded as being unrelated to his ability to perform the duties of his job, and regarded as substantially limiting one or more of plaintiff’s major life activities. MCL 37.1103(e).

As the trial court explained, plaintiff failed to present evidence that his perceived disability was regarded by defendant as substantially limiting plaintiff’s ability to work. To the contrary, plaintiff’s supervisors consistently reported that plaintiff was a very good repairman and, even after his discharge, defendant offered to reinstate plaintiff to a different department. As this Court has explained, “[a]n impairment that interferes with an individual’s ability to do a particular job, but does not significantly decrease the individual’s ability to obtain satisfactory employment elsewhere, does not substantially limit the major life activity of working.” *Lown v JJ Eaton Place*, 235 Mich App 721, 735; 598 NW2d 633 (1999). The trial court correctly concluded that plaintiff’s alleged perceived disability was not regarded as substantially limiting his major life activity of working. See *Michalski, supra* at 732-735.

In addition, as the trial court also observed, plaintiff argued that defendant regarded his perceived disability as being related to his ability to perform his particular repair job. Plaintiff’s repair job required that he be in contact with coworkers, and the perceived disability was based on reports that plaintiff was allegedly hostile and threatening to coworkers when repairs were needed. Thus, plaintiff failed to establish that the alleged perceived disability was regarded as being unrelated to his ability to perform his duties. See *id.* at 735.

Contrary to what plaintiff argues, the trial court did not engage in improper fact-finding, but rather properly concluded that there was no genuine issue of material fact that plaintiff failed to establish that he was a member of a protected class under the PWDCRA and, therefore, failed to establish a prima facie case.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Joel P. Hoekstra

/s/ Jane E. Markey